IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:07-12-2006

Coram :

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.2994 of 2001

D.Thiagarajan ... Appellant(Petitioner in WP No. 10878/93)

Vs.

1.The District Collector
Chengai M.G.R. District.

2. The District Collector
Trichy District. .. Respondents (Respondents in -do-)

Writ appeal filed under Clause 15 of the Letters Patent Act against the order dated 18.09.2000 made in W.P.No.10878 of 1993 presented under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondents ending with the order of the 1st respondent in R.Dis.88035/87/J13 dated 3.5.1993 and quash the same.

For Appellant : Mr.V.N.Mohanraj for Mr.T.D.Vasu
For Respondents : Mr.K.Elango, Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by S.TAMILVANAN, J.)

This writ appeal is directed against the order, dated 18.09.2000, made in W.P.No.10878/93, in and by which the learned single judge, after finding that the petitioner / appellant had failed to make out a case for interference, dismissed the writ petition.

2. Heard Mr.V.N.Mohanraj, learned counsel for the appellant and Mr.K.Elango, learned Special Government Pleader for the respondents.

3. The writ petitioner is the appellant herein, who filed the writ petition, challenging the order, dated 03.05.1993, passed by the first respondent, where by the Community Certificates that had been

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issued with a designation of Tahsildar, Saidapet on 16.08.1979 and 15.03.1982, stating that the petitioner / appellant belongs to Konda Reddy Community of Scheduled Tribe, was cancelled on the ground of bogus Community Certificate, obtained by fraudulent means.

4. According to the petitioner / appellant, he is a native of Pulivalam Village, Thuraiyur Taluk, Trichy District, belongs to Konda Reddy Community of Scheduled Tribe and that his relatives and forefathers belong to the said community, following the customs and culture of Konda Reddy Community, Thuraiyur Taluk, Trichy District, and he joined the service of Indian Overseas Bank, Pulivalam Branch in the year 1982, based on the certificate issued by the Tahsildar, Saidapet, on 16.08.1979. Subsequently, on the basis of the report of the District Collector, Trichy, the first respondent, namely, the District Collector, Chengai M.G.R.District, called upon the petitioner / appellant to show cause as to why his Community Certificate should not be cancelled. After enquiry by the impugned order, in the writ petition, dated 03.05.1993, passed by the first respondent herein, the aforesaid Community Certificate, dated 16.08.1979, that had been issued by the Tahsildar, Saidapet, was cancelled by the first respondent. Aggrieved by which the petitioner / appellant, filed the writ petition, challenging the said order, dated 03.05.1993, passed by the first respondent in R.Dis.88035/87/J13, seeking a direction to call for the records relating to the said order and quash the same.

5. According to the petitioner / appellant, without furnishing all the copies of documents and providing reasonable opportunity to defend his case, the first respondent herein, passed the impugned order, whereby cancelled the Community Certificate issued by the Tahsildar, Saidapet. He had further contended that subsequent Tahsildar of Saidapet, was not competent to express his opinion that the Community Certificate, in question, dated 16.08.1979 and 15.03.1982 as bogus certificate.

6. The learned single Judge has not accepted the above said contention raised by the petitioner / appellant and held that proper and reasonable opportunity was given to the petitioner / appellant, but he failed to establish that he belongs to Konda Reddy Community of Scheduled Tribe and on the other hand, it has been clearly proved by the respondents herein, that even in the service register of the elder brother of the petitioner / appellant, it has been mentioned that he belongs to Reddiyar Community of Forward Class, that apart, in the school records of the petitioner / appellant, his sister and his other brothers and by local enquiry conducted by the revenue authorities, would also establish the fact that the petitioner / appellant belongs to Reddiyar Community of Forward Class and that the first respondent, has rightly passed the impugned order, cancelling the Community Certificate issued with the designation of the

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Tahsildar, Saidapet and on that finding, the learned single Judge held that there was no need for interference with the impugned order and dismissed the writ petition.

7. According to the learned counsel for the appellant, Mr. V.N.Monahraj, on 16.08.1979, when the Community Certificate was issued to the petitioner / appellant, Tahsildar was the competent authority to issue the certificate and that the Community Certificate issued by the Tahsildar, Saidapet is still in force. Only subsequently, in view of the G.O.Ms.No.2137, dated 11.11.1989, the Revenue Divisional Officer became the competent authority to issue Community Certificate for Scheduled Tribe Community.

8. The following decisions were referred to in deciding the legal aspect involved in the writ appeal :

(a) R.Kandasamy v. Chief Engineer, Madras Port Trust, (1997) 7 SCC 505
(b) C.Baskaran v. The District Collector, Trichy, 1997 WLR 33
(c) Judgment delivered by this Court in W.A.No.2537 of 2001

11. In the decision R.Kandasamy v. Chief Engineer, Madras Port Trust, reported in (1997) 7 SCC 505, the Honourable Apex Court has held at page number 506 thus :

> " 5. On a doubt being raised regarding the validity of certificates issued by the Tehsildar prior to 11-11-1089, the Joint Secretary to the Government of Tamil Nadu on 03-04-1991 informed the Collectors of various districts in Tamil Nadu that "the permanent Community Certificate issued to Scheduled Tribes by Tehsildars upto 11-11-1989 is valid. This communication had been placed on record in the High Court. From a combined reading of G.O.Ms.No.2137, dated 11-11-1989 and letter of the Joint Secretary, dated 03-04-1991, (supra), it follows that whereas a Community Certificate after 11-11-1989 is required to be issued by the Revenue Divisional Officer, but the Community Certificates issued by the Tehsildar prior to 11-11-1989 are valid certificates. In view of this position, it was not proper for the respondent to have insisted upon a fresh certificate to be produced by the appellant from the Revenue Divisional Officer as admittedly the Community Certificate produced by the appellant had been issued by the Tehsildar concerned in 1987, that is, prior to 11-11-1989."

12. As per the decision of the Honourable Supreme Court, the Community Certificate issued to a Scheduled Tribe candidate,

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by Tahsildar prior to 11-11-1989 is a good and valid certificate for all purposes, so long as such certificate is not cancelled and the authorities cannot decline to take into consideration of the same and insist upon a fresh Community Certificate from the Revenue Divisonal Officer.

13. In the case on hand, it is seen that the issue involved is different, since the Community Certificate produced by the petitioner / appellant for getting his employment in the Indian Overseas Bank was found to be a bogus document obtained by fraudulent means. The contention of the learned counsel for the appellant that the Community Certificate, dated 16.08.1979 is still in force cannot be accepted, since the same was cancelled by the District Collector, the first respondent herein, by his order, dated 03.05.1993, after a detailed enquiry. Further, petitioner / appellant was not asked to produce any fresh Community Certificate from the Revenue Divisional Officer, on the ground that the earlier Community Certificate was issued by Tahsildar and not by a Revenue Divisional Officer. Therefore, we are of the view that the decision cited above by the learned counsel for the appellant is not relevant to the facts and circumstances of the case on hand.

14. The Division Bench of this Court in C.Baskaran v. The District Collector, Trichy reported in 1997 WLR 33, has held that the principles of natural justice was not followed and further the in-charge Collector cannot be considered as Collector and he is only intended to look after the day-to-day administration and is not empowered to exercise any statutory powers, and therefore, on that ground, the impugned order was set aside.

15. But, here in the instant case, before cancelling the Community Certificate, on the ground of bogus Community Certificate produced by fraudulent means, with a designation of Tahsildar, Saidapet, it is seen that the competent authority, who is the first respondent herein, has provided reasonable opportunity, as found by the learned single Judge and sufficient time was also granted as requested by the appellant and the enquiry was also postponed and admittedly, he participated in the enquiry. There is no satisfactory explanation as to why he had obtained the Community Certificate, dated 16.08.1979 and 15.03.1982, stating himself belongs to Konda Reddy Community of Scheduled Tribe, from a Tahsildar (Tahsildar, Saidapet) of a different district (Chengai M.G.R. District), though admittedly, himself, his father and others have been permanent native and resident of Pulivalam Village, Thuraiyur Taluk of Trichy District and also got appointment in the Indian Overseas Bank, Pulivalam Branch. Similarly, it is not disputed by the appellant, that as per his school certificate, service register of his brother and the revenue records, relating to the petitioner / appellant and his sister and three brothers and father have been shown only as Reddiyar

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Community of Forward Class.

16. In the affidavit filed in support of the writ petition, the petitioner / appellant, has admitted that he is a native of Pulivalam Village, Thuraiyur Taluk, Trichy District, belongs to Konda Reddy Community of Scheduled Tribe. According to him, his father, relatives and forefathers belong to Konda Reddy Community, following the customs and culture of Konda Reddy Community, in Thuraiyur Taluk, Trichy District and he joined the service of Indian Overseas Bank, Pulivalam Branch in the year 1982, stating himself as a candidate belongs to Konda Reddy Community of Scheduled Tribe, on the strength of the Community Certificate, dated 16.08.1979 obtained from Tahsildar, Saidapet of Chengai M.G.R. District. Since the appellant belong to Trichy District, the authorities of Indian Overseas Bank, had requested the District Collector, Trichy to verify the genuineness of the Community Certificate produced by the appellant, based on which the appellant could obtain employment in the Indian Overseas Bank, under Schedule Tribe quota.

17. It is not in dispute that Thuraiyur Taluk, comes under the Revenue Division of Musiri of Trichy District and hence the District Collector, Trichy had rightly asked the Revenue Divisional Officer, Musiri to conduct a detailed enquiry on the community of the petitioner / appellant and submit a report. Accordingly, being the competent authority, the Revenue Divisional Officer, Musiri, had conducted enquiry and found that though the appellant and his family members are residing only at Pulivalam Village, Thuraiyur Taluk, they do not belong to Konda Reddy Community of Scheduled Tribe, but on the other hand, they belong to Forward Class of Reddiyar Community and that they are residing in the area of Forward Class Hindu Reddiyar Community and also following the custom of Reddiyar Community of Forward Class. Based on the report of the District Collector, Trichy, since the Community Certificate, dated 16.08.1979 and 15.03.1982 was said to be issued by the Tahsildar, Saidapet of Chengai M.G.R. District, the said District Collector, the first respondent herein, being the competent authority to cancel the same, had issued notice to the appellant, called upon the petitioner / appellant to show cause as to why the Community Certificate issued with the designation of Tahsildar, stating him as a person belongs to Konda Reddy Community should not be cancelled.

18. As found by the learned single Judge, in the impugned order, it is seen that the petitioner / appellant was provided reasonable opportunity by the first respondent and in fact, he was asked to appear for an enquiry in the Collector Office on 26.09.1988. After the receipt of the notice, as the petitioner / appellant intimated that he was unable to attend the enquiry due to illness, and on some other reason, the same was also considered by the District Collector and on 10.10.1988, the petitioner / appellant appeared before the

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authority, but he failed to establish his contention that he belongs to Konda Reddy Community of Scheduled Tribe.

19. In support of his claim, as Konda Reddy Community, as held by the learned single Judge, and as per the order, dated 03.05.1993, passed by the District Collector, Chengai M.G.R.District, the petitioner / appellant had produced before the said District Collector, the following documents : a) Xerox copy of the Document No.1555, registered on 25.08.1977 at Sub Registrar Officer, Thuraiyur Taluk, Trichy District, wherein the Community of his father Duraisamy has been mentioned as Konda Reddy, a typed copy of the same is available in the typeset of the writ appeal. It is a self-serving document of a sale deed, executed in the year 1977, wherein even the father of Duraisamy Reddy has not been stated. It reads only as "Duraisamy Reddy, farmer, Konda Reddy by caste herein after called the Purchaser". It has been admitted that Duraisamy Reddy is the father of the appellant, but even the father Duraisamy Reddy has not been stated in the alleged copy of the sale deed, but on the other hand, the community is stated as Konda Reddy. If really he was a person belonging to Konda Reddy Community, in revenue records and in the school records, relating to the appellant and his sister and three brothers, their community could have been stated as Konda Reddy Community and not Reddiyar Community of Forward Class. b) Xerox copy of a sale deed, dated 04.08.1912, registered in favour of one Papaiya of Konda Reddy Community, belongs to Hosur Taluk, Salem, as found by the learned single Judge, the said document is no way connected with the appellant. According to the appellant, the person stated in the second document is a relative of his wife. Even the wife of the appellant belongs to Konda Reddy Community, that would not be sufficient to prove that the petitioner / appellant belongs to the same community, as there are possibilities for the spouse belongs to different community. Even that has not been proved. Therefore, as found by the learned single Judge, though proper opportunity was given, the petitioner / appellant failed to establish that he belongs to Konda Reddy Community of Scheduled Tribe and on the other hand, the respondents have prima facie established that the appellant does not belong to Konda Reddy Community of Scheduled Tribe.

20. When there is a dispute with regard to the community of a person, who has obtained employment in Government Department or Government undertaking, either on the basis of Scheduled Caste / Scheduled Tribe or Backward Class / Most Backward Class, the initial burden is upon the person to prove that he belongs to the particular community, eligible to get employment under the respective quota. After getting employment, he cannot simply shift the burden on the employer or the authorities, when there is prima facie case, made out against the claim of such person by the authorities.

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21. We are of the firm view that a genuine person should not be put to hardship, but at the same time, the concession that are available for a particular category of person, as per law, should not be misused by any other person, who is not entitled to such concession.

22. As held by the learned single Judge, it is clear that proper and reasonable opportunity was given to the petitioner / appellant and that copies were also furnished to him. Though the appellant, who has got employment in the Indian Overseas Bank under the Scheduled Tribe Quota, on the strength of a Community Certificate, said to have been obtained from the Tahsildar, Saidapet, Chengai M.G.R. District, who is admittedly, not the jurisdictional Tahsildar of his native district and ultimately, the same was also found as bogus certificate and the local verification made by the responsible authorities, would also show that the appellant does not belong to Konda Reddy Community of Scheduled Tribe, hence, the defence raised in the writ appeal on the trivial technicalities hold no water.

23. The learned counsel appearing for the appellant would request this Court that the matter be remitted back to the District Collector, so as to provide further opportunity to the petitioner / appellant. But it is seen that the petitioner/ appellant joined the service of Indian Overseas Bank, Pulivalam Branch in the year 1982, on the basis of the Community Certificate produced by him with a designation of Tahsildar, Saidapet, and has managed to continue in service for about 24 years, though, he has failed to prove that he belong to Konda Reddy Community of Scheduled Tribe, but on the contrary, the respondents have established that he belong to Reddiyar Community of Forward Class. Therefore, in the aforesaid circumstances, we are of the considered view that providing further opportunity would not meet the ends of justice, since prima facie, there is no case made out in favour of the petitioner / appellant to decide the writ appeal in his favour.

24. Considering the detailed order passed by the learned single Judge, we are of the considered view that there is no error or infirmity in the impugned order, so as to interfere with the same and hence, the writ appeal fails.

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25. In the result, the appeal is liable to be dismissed and accordingly, the same is dismissed. No costs. Consequently, connected W.A.M.P.No.22214 of 2001 is also dismissed.

tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The District Collector
Chengai M.G.R. District.

2.The District Collector
Trichy District.

ONE CC TO MR.T.D. VASU, ADVOCATE SR 60627

ONE CC TO THE G.P, SR 60668

Judgment in
W.A.No.2994 of 2001

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